

## 7 PERC ¶ 14124

### HEERA UNIT DETERMINATION - PATIENT CARE EMPLOYEES

California Public Employment Relations Board

#### **In the Matter of: Unit Determination for Professional Patient Care Employees of the University of California Pursuant to Chapter 744 of Statutes of 1978 (Higher Education Employer-Employee Relations Act)**

Docket No. SF-PC-1001 et al.

Order No. 248b-H

March 31, 1983

HEERA Unit Determination (Patient Care Employees)  
Before Tovar, Morgenstern and Burt, Members\*

**Unit Determination -- Supervisory Employees -- Registered Nurses -- -- 16.32, 33.42** University's nurses in following job classifications were supervisory employees where evidence showed that individual nurses within classifications exercised supervisory authority over other members of registered nurses' unit: (1) administrative nurses II; (2) administrative nurses I, limited to those who acted as head nurses in small outpatient clinics; (3) clinical nurses V; (4) specifically named clinical nurses IV, III and II; (5) senior nurse anesthetist; and (6) specifically named nurse practitioner II.

**Unit Determination -- Casual Employees -- Per Diem Nurses -- -- 16.452, 34.392** Fact that special duty, or per diem, nurses worked only on as-needed basis, and were not guaranteed minimum number of working hours, was insufficient ground to exclude per diem nurses from registered nurses' unit as casual employees. Similarly, special duty physical therapists were not casual employees and were included in residual patient care professional unit.

**Unit Determination -- Casual Employees -- Laboratory Apprentices -- -- 16.452, 34.392** University's clinical laboratory technologist (CLT) apprentices were not casual employees where apprentices were employed full-time in close working relationship with regular CLT's. Fact that apprentices were not guaranteed permanent employment was insufficient to support claim of casual status.

#### APPEARANCES:

Stewart Weinberg, Attorney (Van Bourg, Allen, Weinberg & Roger) for United Health Care Employees, Service Employees International Union, Locals 535 and 660; Duane B. Beeson, Attorney (Beeson, Tayer, Kovach & Silbert) for California Nurses Association; Glenn Rothner, Attorney (Reich, Adell & Crost) for American Federation of State, County and Municipal Employees, AFL-CIO; Philip E. Callis, Attorney for California State Employees, Association; Douglas H. Barton, Bonnie Kathleen Gibson, Mary Maloney Roberts, Susan C. Paulsen, Attorneys (Corbett, Kane, Berk & Barton) and James N. Odle, Associate Counsel for the Regents of the University of California.

#### DECISION

On September 30, 1982, the Public Employment Relations Board (PERB or Board) issued a

decision<sup>1</sup> under the Higher Education Employer-Employee Relations Act (HEERA)<sup>2</sup> creating two bargaining units of professional patient care employees at the University of California (UC). One unit consists of registered nurses and the second consists of residual patient care professional employees. Pending that decision, exclusionary issues were raised by the parties with respect to the alleged managerial, supervisory, confidential and casual status of employees in the registered nurses and residual patient care professional units, as well as other proposed UC units. The hearing on these exclusionary issues began on July 14, 1982. See *Unit Determination for Employees of the Regents of the University of California* (9/4/81) PERB Order No. Ad-114-H and (4/20/82) PERB Order No. Ad-114a-H. It soon became apparent that the development of the record for this and related UC units would be an unduly lengthy and complex process since a total of approximately 7000 exclusionary issues were involved. As a result, on August 4, 1982, during the testimony pertaining to another unit, the Board ordered the hearing suspended pending further procedural orders. *Unit Determination for Employees of the Regents of the University of California* (8/4/82) PERB Order No. Ad-114b-H.

Thereafter, on August 12, 1982, the director of representation issued a pre-hearing notice and order for investigation, production of documents and hearing. See *Unit Determination for Employees of the Regents of the University of California (Exclusionary Phase)* (9/14/82) PERB Order No. Ad-114c-H. This order directed UC to submit declarations and relevant supporting documents to support each whole classification (List A submission) and each individual employee (List B submission) exclusionary claim. The order provided that the documentation submitted by UC should be legally sufficient to constitute its case-in-chief for all disputed classification and employees.

The employee organizations were directed to review the material submitted by UC and to submit counter-declarations and relevant documents where they opposed UC's exclusionary claims. The employee organizations were advised that a failure to file counter-declarations would be deemed a waiver of opposition to the claim unless opposition was stated on the ground that a *prima facie* case was not established by UC. The parties were then advised that PERB would examine the disputed claims on the basis of the totality of materials submitted by the parties to determine whether a sufficient case was presented for decision by the Board, or whether further investigation or formal hearing would be required to resolve disputed issues of fact.

As a result of the procedural history described above, the record in this matter substantially consists of declarations submitted by UC. The employee organization did not submit any counter-declarations. In their briefs they argue that UC's documentation is insufficient to establish a *prima facie* case such that none of the claimed exclusions should be allowed. The record also consists of the transcript in the matter of the *Unit Determination for Professional Patient Care Employees of the University of California, supra*, PERB Decision No. 248-H, including class specifications, job descriptions, the staff personnel manual and salary schedules. As discussed, *infra*, the record in some cases establishes and in some cases does not establish a *prima facie* case sufficient to exclude the disputed classifications and employees.

## DISCUSSION

The terms "managerial employee," "supervisory employee" and "confidential employee" are defined in subsection 3562(1),<sup>3</sup> section 3580.34 and subsection 3562(e)<sup>5</sup>, respectively.<sup>6</sup> The definitions in these sections of HEERA essentially parallel the definitions of managerial, supervisory and confidential employees found in the State Employer-Employee Relations Act (SEERA).<sup>7</sup>

In deciding this case, we find no reason to depart from the Board's conclusions regarding exclusionary issues set forth in *Unit Determination for the State of California Pursuant to Chapter 1159 of the Statutes of 1977 (State Employer-Employee Relations Act)* (12/31/80) PERB Decision No. 110c-S.<sup>8</sup> Thus, we conclude that the burden of proving an exclusionary claim rests

with the party asserting it.<sup>9</sup> Stipulations of fact submitted by the parties are accepted as conclusive. Additionally, see the detailed discussion regarding managerial and supervisory employees in *Unit Determination for Professional Scientists and Engineers, Lawrence Livermore National Laboratory, of the University of California Pursuant to Chapter 744 of Statutes of 1978 (Higher Education Employer-Employee Relations Act 3/8/83)* PERB Decision No. 246a-H, at p. 8 *et seq.*

As was stated in that case, the Board's analysis according to the principles established in the SEERA unit determination decision has been complicated because the record provides few direct facts regarding the amount of time the employees in issue perform duties substantially the same as those of their subordinates, or whether the exercise of supervisory duties is sporadic and atypical or requires the use of independent judgment. Absent these facts, the evidence must be conservatively approached. Thus, the point at which an employee's supervisory obligation to the employer outweighs the entitlement of the rights afforded rank-and-file employees will be reached only where the record indicates the substantial performance of supervisory duties. Additionally, certain supervisory duties may indicate a serious potential for a conflict of interest with bargaining unit members and thus require the exclusion of an employee.

### **REGISTERED NURSES UNIT**

Registered nurses in the university system work in a variety of facilities such as university hospitals, medical centers, medical schools and student health care services. However, the organization of the facilities is often similar. Under the director of a facility is an associate director of nursing or an associate director in charge of a discrete group of nurses such as the preambulatory care nurses or anesthesia nurses. The ultimate power to hire, fire, transfer and discipline nurses generally resides in the associate director, yet that authority and other supervisory powers may be delegated through the organizational structure. Under the associate director in charge of a unit or service of the facility is a head nurse, then a charge nurse responsible for a specific area or function, shift leads, and finally floor nurses. During the swing and graveyard shifts a shift lead may have responsibility for directing work and counseling employees. The classifications of the nurses within the various levels of responsibility depend upon the size of the facility, unit or service and the level of responsibility.

The university has a two track system of classification in the registered nurses unit. The administrative nurse series is designed as a managerial and supervisory track while the clinical nurse series is the operational level concerned most directly with patient care. Advancement in the clinical nurse series comes with increased knowledge, skill, experience and technical expertise. Head nurses are generally in the upper level administrative nurse classification.

UC claims that some or all employees within ten job classifications should be excluded from the registered nurses bargaining unit as managers or supervisors.<sup>10</sup> In addition, it seeks to exclude one classification of nurses as casual.

The Board has attempted, in light of current National Labor Relations Board decisions, to determine whether the duties and functions described are predominately an exercise of professional judgment incidental to the treatment of patients or an exercise of true supervisory authority. See *Eventide South, a Division of Geriatrics Inc.* (1978) 239 NLRB 287 [99 LRRM 1606]; *Doctor's Hospital* (1975) 217 NLRB No. 87 [89 LRRM 1525].

*Occupational Health Nurse II, Lawrence Berkeley Laboratory (Class Code 180.2) (List A)*

There is one incumbent in the classification of occupational health nurse II (OHN II). As the higher of the two grades in the OHN series, the duties of Connie Grondora basically include scheduling, training and writing performance appraisals of two other nurses. However, although she assigns and evaluates the work of these nurses, the majority of her work is similar to that of her subordinates in that she is involved in patient care, physical examinations, therapy and

dispensing medication.

The very duties claimed as supervisory are those which are most accurately described as merely routine or clerical functions which are carried out within the narrow constraints of university policies and procedures. The record does not indicate actual supervisory authority. Because Grondora spends most of her time doing the work of her subordinates and her lead functions are routine and clerical in nature, we include the occupational health nurse II classification in the registered nurses unit.

*Administrative Nurse II (Class Code 9133) (List A)*

The administrative nurse (AN) series is designed, through five levels of progressively more responsible classifications in the series, to provide executive leadership development supporting the delivery of quality nursing within the university system. Although all incumbents at all levels of the series must be qualified to perform at various clinical nurse levels and skills, their main concern is the management system necessary to support the health care delivery of the clinical nurses.

UC seeks to exclude all 165 incumbents in the administrative nurse II classification.<sup>11</sup> An AN II may act as the head nurse of a small unit providing around-the-clock inpatient care at a university hospital, as a head nurse for an outpatient clinic open eight to 12 hours five days a week, or as a shift manager for a large discrete inpatient unit. One AN II is the program manager of a psychiatric emergency services unit. AN II's direct the work of clinical nurses, laboratory technicians and unit service coordinators.

The record indicates that AN II's hire employees, write effective performance evaluations, adjust grievances and exercise independent judgment in making or accepting transfers into their work unit. For these reasons we find that the AN II classification is supervisory and excluded from the registered nurses unit.

*Administrative Nurse I (Class Code 9134) (List A)*

The administrative nurse I classification is the entry level into the administrative nurse series. UC seeks to exclude all 186 incumbents in this classification.

AN I's are employed as the head nurse for a small outpatient clinic, as a shift coordinator for a small inpatient unit, or as an assistant head nurse for a large inpatient unit. They generally are expected to be able to qualify as and perform the work of a clinical nurse III. Indeed, one job description indicates that the AN I performs work equivalent to her nursing subordinates up to 80 percent of the time.

With the exception noted below, AN I's do not have sufficient indicia of supervising authority. They may only take personnel actions with the approval of their superior who is usually an AN III. These AN I's perform work similar to that of their subordinates. Their clinical supervision and subordinate evaluation functions are more an exercise of professional judgment related to patient care than a true exercise of supervisory authority.

The record does indicate that AN I's employed as the head nurse for a small outpatient clinic do perform substantial supervisory functions in the areas of hiring, performance evaluations and grievance resolution. This is true even though the record indicates that the units AN I's head are usually so small that the ratio of supervisor to subordinates will be one to one, two or three.

Thus, the AN I classification is included in the registered nurses unit, and AN I's acting as the head nurse for a small outpatient clinic are excluded as supervisory.

*Clinical Nurse V (Class Code 9136) (List A)*

The clinical nurse (CN) series consists of the classifications which are the most numerous and the most directly involved in patient and family care. Progression through the CN series requires increasing experience and expertise in patient care.

The clinical nurse V classification is the highest classification in the CN series. There are ten incumbents whose duties are principally in the area of clinical research and special studies. They

also develop, implement and evaluate educational programs for nurses.

CN V's perform substantial supervisory duties in the hiring and employee evaluation processes and may resolve grievances. Their salary scale is equivalent to that of administrative nurse IV which is typically an assistant director of nursing classification. Based on these facts, we find the CN V classification should be excluded from the registered nurses unit.

*Clinical Nurse IV (Class Code 9137)*

The clinical nurse IV classification is the second most responsible in the CN classification. CN IV's use their experience and knowledge to provide, plan and evaluate care for patients with more complex health problems. They may also be involved in patient care supervision, evaluation and teaching. Of the 289 incumbents in the classification, UC claims 89 employees should be excluded as supervisors.

The following CN IV's are excluded from the unit because they have significant supervisory authority to hire, transfer, write effective performance evaluations and resolve grievances:

*Name*

Mary Ellen Briggs

Lisa Cleaver

Sharon Degner

Ellen Drever

Cecilia Echon

Ann Gawlinski

Rufina Gee

Peral Jemison-Smith

Judy Keller

Leslie Kern

Vivian Molyneaux

Jill Nusbaum

Pat O'Brien

Susan Smith

Eileen Turner

M.B. Wolvin

*Department*

Nursing

Nursing

Nursing

Nursing

Nursing

Nursing

Nursing

Nursing

Emergency

Nursing

Nursing

Nursing

Nursing

Nursing

Nursing  
Nursing  
*Campus*

UCD

UCLA

UCD

UCSF

UCSD

UCLA

UCD

UCI

UCLA

UCLA

UCSF

UCSF

UCLA

UCLA

UCSF

UCI

The remaining incumbents in this classification do not exercise similar duties and therefore are not supervisory. The Board therefore finds that all CN IV's not specifically listed above are included in the registered nurses unit.

*Clinical Nurse III (Class Code 9138)*

Clinical nurse III's provide patient care in cases presenting complex problems. They work under general supervision and yet may themselves provide some clinical supervision, subordinate evaluation and in-service education and training.

UC claims that 84 of the 794 incumbents in the CN III classification should be excluded from the unit as supervisors. We find, however, that only a few CN III's exercise significant supervisory authority. Those that do have significant supervisory authority to hire, transfer, write effective performance evaluations and resolve grievances. Thus, the following employees are excluded from the registered nurses unit:

*Name*

Elizabeth Bastible

Margery Lyons

Mary Ellen Meier

Charlotte Miller

Katharina Seiffert

Deborah Trevithick

Janet Veatch

*Department*

ACC Nursing

ACC Nursing

Emergency

Radiation Oncology

Nursing

Nursing  
Nursing  
*Campus*  
UCSF  
UCSF  
UCD  
UCLA  
UCD  
UCSF  
UCSF

All of the other disputed CN III's lack similar authority and are included in the registered nurses unit.

*Clinical Nurse II (Class Code 9139)*

The clinical nurse II classification is the largest in the CN series. UC seeks to exclude 17 of the 1,793 incumbents of this classification. Employees in this classification provide care to patients in a structured environment. They are guided by standard clinical procedures and current patient care practices.

We find that the majority of the 17 disputed positions do not exercise significant supervisory authority and are included in the registered nurses unit. Some CN II's are excluded as supervisory because they participate in the hiring process, make performance evaluations which effect employment status and may exercise independent judgment in the resolution of grievances. The following employees are excluded from the registered nurses unit as supervisory:

*Name*

Marlou Carrion-Petersen  
Vanessa Clark  
Jo Ann Noonan  
Edith Phillips

*Department*

Medicine  
Pediatric/Adolescent  
NPI  
Nursing  
*Campus*  
UCSD  
UCSD  
UCLA  
UCD

*Senior Nurse Anesthetist (Class Code 9143)*

UC seeks to exclude one of 31 incumbents in the senior nurse anesthetist classification as supervisory. This classification is second in a series of three anesthetist classifications. These classifications are nurse anesthetist (9144), senior nurse anesthetist and principal nurse anesthetist (9142).

Nurse anesthetists administer anesthetics to patients undergoing surgical and obstetrical procedures and perform related duties as required. Senior nurse anesthetists are assigned lead responsibilities over a group of three full-time-equivalent nurse anesthetists or are specifically assigned more difficult and demanding cases.

Senior nurse anesthetist Victoria Taber additionally performs significant supervisory functions. She selects employees to be hired and approves transfers of employees into her unit. She also writes performance evaluations which are critical to the employment status of probationary employees. These duties are sufficient to exclude her from the registered nurses unit.

#### *Nurse Practitioner II (Class Code 9147)*

There are 38 incumbents in the nurse practitioner II classification. UC seeks to exclude only one incumbent as a supervisor. The record indicates that Teri Richards selects the employees to be hired into her unit, and uses independent judgment to resolve grievances and to discipline subordinates. We therefore find that she is excluded from the registered nurses unit.

#### *Managerial Issues*

UC seeks to exclude the classifications of administrative nurse II and administrative nurse I, and two incumbents in the clinical nurse III classification as managerial. We have already excluded as supervisory the administrative nurse II classification, certain employees in the administrative nurse I classification, and employees M. Lyons and E. Bastible in the clinical nurse III classification as at least supervisory. Therefore, it is unnecessary to decide their managerial status.<sup>12</sup>

The evidence submitted by UC with regard to the managerial status of the administrative nurse I classification indicates that some incumbents are managerial and some are not. Some incumbents are clearly managerial because they are solely responsible for the overall operation of their units, possess significant responsibilities for both formulating and administering policies and programs, and perform a number of duties indicating substantial responsibility for developing, administering and modifying their unit budgets.<sup>13</sup> In contrast, the other claimed managers merely share their responsibility for the operation of their departments and the development of policies and programs. While their recommendations concerning the development and administration of the budget for the unit may be routinely followed, there is no indication of significant responsibility. These employees are not managerial.

Since the managerial status of the entire administrative nurse I classification is in issue, it is not possible to distinguish from the evidence which incumbents are managerial and which are not. Therefore, neither the entire classification nor any incumbents can be excluded from the unit as managerial.

#### *Casual Issue*

Casual employees are those who, due to their sporadic or intermittent relationship with the employer, lack a sufficient community of interest with regular employees to be included in the representational unit. *Unit Determination for Employees of the California State University and Colleges Pursuant to Chapter 744 of the Statutes of 1978 (Higher Education Employer-Employee Relations Act)* (9/22/81) PERB Decision No. 173-H; citing *Mission Pak Co.* (1960) 127 NLRB 1097 [46 LRRM 1161]. In considering the status of alleged casual employees and the appropriateness of excluding them from the patient care units, we are required to consider the following criteria set forth in subsection 3579(a) of HEERA which, in pertinent part, provides:

(a) In each case where the appropriateness of a unit is an issue, in determining an appropriate unit, the board shall take into consideration all of the following criteria:

(1) The internal and occupational community of interest among the employees, including, but not limited to, the extent to which they perform functionally related services or work toward established common goals, the history of employee representation with the employer, the extent to which such employees belong to the same employee organization, the extent to which the employees have common skills, working conditions, job duties, or similar educational or



training requirements, and the extent to which the employees have common supervision.

In addition to the above statutory criteria, the Board has consistently held, in accordance with other jurisdictions, that such factors as qualifications, job function, compensation, hours of work, fringe benefits, integration of work function, and interchange between employees are relevant in determining community of interest.<sup>14</sup> As stated in *Monterey Peninsula Community College District, Id.*:

. . . community of interest is not determined by going down a check list of these factors. The point of the comparison is to reveal the interests of the employees and ascertain whether they share a substantial mutual interest in matters subject to meeting and negotiation. (Citation omitted.) The interests of included employees must be mutual not distinct, and substantial not tenuous. Thus, employees may be excluded from a particular unit either because their interests are separate and apart from those of the employees in that particular unit, (citation omitted) or because their interest in negotiable matters subject to the control of the employer is so insubstantial that they do not share mutual interests with other unit employees. (PERB Decision No. 76 at p. 13.)

UC seeks to exclude only the *per diem* (special duty) nurse (9119) classification from the registered nurses unit as casual. It makes two arguments with regard to this classification. It first contends that any employee who does not qualify for membership in one of the several retirement systems for which university employees may be eligible should be deemed casual and excluded from the bargaining unit. Generally, to be eligible for membership in these systems, a university employee must work more than 50 percent time and have an appointment of more than a year's duration. UC argues that only employees who meet these criteria for retirement system participation have sufficient employment interests to warrant their inclusion in the bargaining unit.

UC, in essence, is attempting to define a point at which an employee's relationship with the university is transformed from intermittent and sporadic to substantial and continuing. UC contends that if an employee fails to satisfy the qualifications for participation in its retirement system, the status of that person is *per se* casual.

The Board has specifically rejected such an approach. In *Dixie Elementary School District* (8/11/81) PERB Decision No. 171, the Board modified an existing unit or regular full-time, substitute and temporary teachers by including certain unrepresented day-to-day substitutes and temporary teachers. The Board noted that there was:

. . . no indication that the [petitioned-for] teachers' interest and commitment to, or empathy with, the concerns of others within the bargaining unit, is proportional to their number-of-days-employment. Moreover, to impose a threshold requirement for inclusion in the unit based on number-of-days-employment would be inevitably arbitrary [footnote omitted]. There is no rationale instructing where the line establishing the minimum should be drawn. Accordingly, this Board does not require, as a condition of unit membership, that a classroom teacher work for a specified number of days. (PERB Decision No. 171, at pp. 7-8.)<sup>15</sup>

Additionally, the Board has rejected the argument that less than 50 percent part-time employment alone should automatically result in the casual designation of an employee. See *Belmont Elementary School District, Id.*, EERB Decision No. 7; *Paramount Unified School District* (10/7/77) EERB Decision No. 33. Thus, the mere fact that an employee does not work a sufficient number of days or percent of time to qualify for participation in a university retirement system does not, in and of itself, indicate that the employee does not share a community of interest with

other unit members.

UC secondly argues that if the Board does not adopt the retirement system eligibility criterion the individuals in the *per diem* nurse classification should nevertheless be excluded from the registered nurses unit because they lack a sufficient community of interest with other unit employees and do not have a reasonable expectation of continuing regular employment.

*Per diem* nurses work on an as-needed basis to provide temporary professional care for individual patients and supplement the regular nursing staff when regular nurses are absent or when the patient load is especially heavy. They are not guaranteed a minimum number of hours and are paid only for the hours they work. These facts are insufficient to establish that the *per diem* nurses lack a sufficient community of interest to be included in the registered nurses unit. The record indicates that these nurses must possess the same qualifications as their permanent counterparts in the bargaining unit. They work under the same conditions in the same environment and perform the same duties subject to the same supervision. The record also indicates that some medical facilities have developed a permanent pool of on-call nurses, and that many nurses work for the university on a regular, if not a full-time, basis. Based on these facts, we find that the *per diem* nurse classification shares a community of interest with other unit members, is not casual and is included in the registered nurses unit.

### **RESIDUAL PATIENT CARE PROFESSIONAL UNIT**

In the residual patient care professional unit, the parties have stipulated for the purposes of any representation election to the exclusion, as managerial, supervisory or confidential, of the classifications and employees listed in Appendices C and D attached hereto. The Board has held that it will approve a stipulation in a unit determination matter when the stipulation does not contravene the Act or established Board policies. *Centinela Valley Union High School District* (8/7/78) PERB Decision No. 62. A review of the record herein reveals that it is adequate to support the stipulations. Therefore, the stipulations are approved by the Board.<sup>16</sup>

The only remaining exclusionary issues to be decided in the residual patient care professional unit are those involving alleged casual classifications. UC makes the same arguments with regard to the alleged casual classifications in this unit as in the registered nurses unit.

#### ***Special Duty Physical Therapist (Class Code 9464)***

Like the *per diem* (special duty) nurse classification, the special duty physical therapists substitute as needed for full-time physical therapists either during an employee's absence or work in addition to the full-time staff when the patient census warrants. They additionally may instruct patients in home treatments and exercise. The classification requires the same qualifications, license and expertise as full-time physical therapists. They work under the same conditions and supervision and have the same authority over hospital assistants.

UC argues that this classification should be excluded as casual because the incumbents are intermittently employed. However, we find that special duty physical therapists share a community of interest with other unit employees and the classification is included in the residual patient care professional unit.

#### ***Clinical Laboratory Technologist Apprentice (Class Code 8957)***

The clinical laboratory technologist (CLT) apprentice position is a training position designed for individuals who have a CLT trainee license and are completing their final required year of training. CLT apprentices are not UC students pursuing their educational goals.

Under close supervision of a CLT, apprentices perform a variety of routine laboratory tests and functions in bacteriology, serology, hematology and biochemistry. They do the same work, under closer supervision, as the other CLT's in the lab. UC does not argue that they are less than full-time, but only that they have no guarantee of permanent employment at the university as a CLT. We find that the close working relationship with other CLT's and similarity of duties, working conditions and supervision require the conclusion that the CLT apprentice classification is not

casual and is included in the residual patient care professional unit.

## ORDER

Upon the foregoing Decision and the entire record in this case, the Public Employment Relations Board ORDERS that:

- (1) The classifications of Administrative Nurse II (Class Code 9133) and Clinical Nurse V (Class Code 9136) are excluded from the Registered Nurses Unit as supervisory for the reasons stated in the foregoing Decision.
- (2) The classification of Administrative Nurse I (Class Code 9134) is included in the Registered Nurses Unit, except that Administrative Nurse I's acting as the head nurse for a small outpatient clinic are excluded as supervisory for the reasons stated in the foregoing Decision.
- (3) The classifications of Occupational Health Nurse II (Class Code 180.2) and the *Per Diem* (Special Duty) Nurse (Class Code 9119) are included in the Registered Nurses Unit for the reasons stated in the foregoing Decision.
- (4) The employees listed in Appendix A are excluded from the Registered Nurses Unit as supervisory for the reasons stated in the foregoing Decision.
- (5) The employees listed in Appendix B are included in the Registered Nurses Unit for the reasons stated in the foregoing Decision.
- (6) No employees are excluded from the Registered Nurses Unit as confidential for the reasons stated in the foregoing Decision.
- (7) The classifications listed in Appendix C are excluded from the Residual Patient Care Professional Unit according to the agreement of the parties and based upon the factual record in this proceeding.
- (8) The positions occupied by the employees listed in Appendix D are excluded from the Residual Patient Care Professional Unit according to the stipulation of the parties and based upon the factual record in this proceeding.
- (9) The classifications of Special Duty Physical Therapist (Class Code 9464) and Clinical Laboratory Technologist Apprentice (Class Code 8957) are not casual and are included in the Residual Patient Care Professional Unit for the reasons stated in the foregoing Decision.
- (10) Any technical errors in this Order shall be presented to the director of representation who shall take appropriate action thereon in accordance with this Decision.

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\*Chairperson Gluck and Member Jaeger did not participate in this decision.

**1** *Unit Determination for Professional Patient Care Employees of the University of California Pursuant to Chapter 744 of the Statutes of 1978 (Higher Education Employer-Employee Relations Act) (9/30/82) PERB Decision No. 248-H. See also the decision concerning requests for reconsideration and judicial review. Unit Determination for Technical Employees; Clerical Employees; Service Employees; Professional Scientists and Engineers, Lawrence Livermore National Laboratory; Professional Librarians; and Professional Patient Care Employees of the University of California Pursuant to Chapter 744 of the Statutes of 1978 (Higher Education Employer-Employee Relations Act) (2/4/83) PERB Decision Nos. 241a-H and 244a-H through 248a-H.*

**2** The HEERA is codified at Government Code section 3560 *et seq.* All statutory references are to the Government Code unless otherwise specified.

**3** Subsection 3562(1) provides:

"Managerial employee" means any employee having significant responsibilities for formulating or administering policies and programs. No employee or group of

employees shall be deemed to be managerial employees solely because the employee or group of employees participate in decisions with respect to courses, curriculum, personnel and other matters of educational policy. A department chair or head of a similar academic unit or program who performs the foregoing duties primarily on behalf of the members of the academic unit or program shall not be deemed a managerial employee solely because of such duties.

**4** Section 3580.3 provides:

"Supervisory employee" means any individual, regardless of the job description or title, having authority, in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. With respect to faculty or academic employees, any department chair, head of a similar academic unit or program, or other employee who performs the foregoing duties primarily in the interest of and on behalf of the members of the academic department, unit or program, shall not be deemed a supervisory employee solely because of such duties; provided, that with respect to the University of California and Hastings College of the Law, there shall be a rebuttable presumption that such an individual appointed by the employer to an indefinite term shall be deemed to be a supervisor. Employees whose duties are substantially similar to those of their subordinates shall not be considered to be supervisory employees.

**5** Subsection 3562(e) provides:

"Confidential employee" means any employee who is required to develop or present management positions with respect to meeting and conferring or whose duties normally require access to confidential information which contributes significantly to the development of such management positions.

**6** Managerial and confidential employees are excluded from coverage under HEERA in subsection 3562(f). Supervisory employees have limited rights as set forth in section 3580 *et seq.*

**7** The SEERA is codified at section 3512 *et seq.*

The definition of "managerial employee" in section 3513(e) of SEERA refers to agency or department policies or programs, does not exclude decisions relevant to courses, curriculum, personnel and other matters of educational policy, and does not include reference to department chairpersons. Subsection 3513(e) provides:

"Managerial employee" means any employee having significant responsibilities for formulating or administering agency or departmental policies and programs or administering an agency or department.

The definition of "supervisory employee" in section 3522.1 of SEERA does not contain the department chairperson language of HEERA. Section 3522.1 provides:

"Supervisory employee" means any individual, regardless of the job description or title, having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but

requires the use of independent judgment. Employees whose duties are substantially similar to those of their subordinates shall not be considered to be supervisory employees.

The definition of "confidential employee" in subsection 3513(f) of SEERA refers to individuals who develop or present management positions with respect to "employer-employee relations" as compared to "meeting and conferring." Subsection 3513(f) provides:

"Confidential employee" means any employee who is required to develop or present management positions with respect to employer-employee relations or whose duties normally require access to confidential information contributing significantly to the development of management positions.

**8** *Unit Determination for Employees of the California State University and College Pursuant to Chapter 744 of the Statutes of 1978 (Higher Education Employer-Employee Relations Act)* (9/22/81) PERB Decision No. 173-H and (11/17/81) PERB Decision No. 176-H.

**9** See also *In Re: The State Employer-Employee Relations Act, Phase III, Unit Determination Proceeding* (10/18/79) PERB Order No. Ad-79-S.

**10** UC does claim that the evidence relating to supervisory status also indicates that many of the disputed employees are confidential and should be excluded on that basis. However, the Board had held that an employer will be allowed only a "small nucleus" of employees who develop or have access to confidential information with respect to meeting and conferring. *Sierra Sands Unified School District* (10/14/76) EERB Decision No. 2; *Unit Determination for Professional Librarians of the University of California Pursuant to Chapter 744 of the Statutes of 1978 (Higher Education Employer-Employee Relations Act)* (3/22/83) PERB Decision No. 247b-H. On the record as presented there is no indication that any service employee has confidential status.

Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board (EERB).

**11** The employee organizations did not seek to include the administrative nurse III through V classifications in the bargaining unit.

**12** The focus of this decision is the determination of those employees who are to be *included* in the unit. The specific basis for the exclusion of an employee, whether it is managerial or supervisory status, is not relevant for this purpose. See the *State Employer-Employee Relations Act, Phase III, Unit Determination Proceeding, supra*, PERB Order No. Ad-79-S, in which the Board stated that it:

. . . views the focus of the Phase III unit determination proceedings to be a determination of those rank and file employees who are to be *included* in the designated appropriate units. However, the burden is on the . . . party which may seek to exclude employees from units because of alleged managerial, supervisory or confidential status--to affirmatively justify their exclusion. This can be done by showing evidence of actual job requirements which would disqualify the subject employees from placement in representation units irrespective of which exclusionary category those employees may fit.

Thus, the Board only approves the exclusion of the employees from the unit, and not the specific basis for the exclusion.

**13** Budget responsibilities were found to be an important consideration in determining managerial status in *Berkeley Unified School District* (8/28/79) PERB Decision No. 101.

**14** *Hartnell Community College District* (1/2/79) PERB Decision No. 81; *Monterey Peninsula Community College District* (10/16/78) PERB Decision No. 76. See also *Kalamazoo Paper Box Corp.* (1962) 136 NLRB 134 [49 LRRM 1715].

**15** Temporary employees were also included in a bargaining unit of teachers in *Belmont Elementary School District* (12/30/76) EERB Decision No. 7, based on similar working conditions and employment as part of the regular faculty pool.

**16** See footnote 12, *supra*.

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